

ASSEMBLY BILL

No. 2694

Introduced by Assembly Member Hollingsworth

February 22, 2002

An act to amend Sections 17052.12 and 23609 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2694, as introduced, Hollingsworth. Income and bank and corporation taxes: credit: research and development.

The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws, including, by reference to a specified federal statute, a credit for increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount and, in addition, for purposes of the Bank and Corporation Tax Law, 24% of the basic research payments, as defined. The term “base amount” means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable year and the fixed-base percentage, as defined, but in no event less than 50% of the qualified research expenses for the taxable year. A taxpayer may elect an alternative incremental credit for increasing research expenses in modified conformity to federal income tax laws.

This bill would, for taxable years beginning on or after January 1, 2002, provide complete conformity to the alternative incremental credit provided under federal income tax laws.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17052.12 of the Revenue and Taxation
2 Code is amended to read:
3 17052.12. For each taxable year beginning on or after January
4 1, 1987, there shall be allowed as a credit against the “net tax” (as
5 defined by Section 17039) for the taxable year an amount
6 determined in accordance with Section 41 of the Internal Revenue
7 Code, except as follows:
8 (a) For each taxable year beginning before January 1, 1997, the
9 reference to “20 percent” in Section 41(a)(1) of the Internal
10 Revenue Code is modified to read “8 percent.”
11 (b) (1) For each taxable year beginning on or after January 1,
12 1997, and before January 1, 1999, the reference to “20 percent”
13 in Section 41(a)(1) of the Internal Revenue Code is modified to
14 read “11 percent.”
15 (2) For each taxable year beginning on or after January 1, 1999,
16 and before January 1, 2000, the reference to “20 percent” in
17 Section 41(a)(1) of the Internal Revenue Code is modified to read
18 “12 percent.”
19 (3) For each taxable year beginning on or after January 1, 2000,
20 the reference to “20 percent” in Section 41(a)(1) of the Internal
21 Revenue Code is modified to read “15 percent.”
22 (c) Section 41(a)(2) of the Internal Revenue Code, relating to
23 basic research payments, shall not apply.
24 (d) “Qualified research” shall include only research conducted
25 in California.
26 (e) In the case where the credit allowed under this section
27 exceeds the “net tax,” the excess may be carried over to reduce the
28 “net tax” in the following year, and succeeding years if necessary,
29 until the credit has been exhausted.
30 (f) (1) With respect to any expense paid or incurred after the
31 operative date of Section 6378, Section 41(b)(1) of the Internal
32 Revenue Code is modified to exclude from the definition of
33 “qualified research expense” any amount paid or incurred for
34 tangible personal property that is eligible for the exemption from
35 sales or use tax provided by Section 6378.

(2) For each taxable year beginning on or after January 1, 1998, the reference to “Section 501(a)” in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read “this part or Part 11 (commencing with Section 23001).”

(g) (1) For each taxable year beginning on or after January 1, 1998, and before January 1, 2000:

(A) The reference to “1.65 percent” in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read “one and thirty-two hundredths of one percent.”

(B) The reference to “2.2 percent” in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read “one and seventy-six hundredths of one percent.”

(C) The reference to “2.75 percent” in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read “two and two-tenths of one percent.”

(2) For each taxable year beginning on or after January 1, 2000, and before January 1, 2002:

(A) The reference to “1.65 percent” in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read “one and forty-nine hundredths of one percent.”

(B) The reference to “2.2 percent” in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read “one and ninety-eight hundredths of one percent.”

(C) The reference to “2.75 percent” in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read “two and forty-eight hundredths of one percent.”

(3) *For each taxable year beginning on or after January 1, 2002, Section 41(c)(4) of the Internal Revenue Code, relating to election of alternative incremental credit, shall apply.*

(4) Section 41(c)(4)(B) shall not apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made for any taxable year of the taxpayer beginning on or after January 1, 1998. That election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Franchise Tax Board.

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(5) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to

1 customers in the ordinary course of the taxpayer's trade or business
2 that is delivered or shipped to a purchaser within this state,
3 regardless of f.o.b. point or any other condition of the sale.

4 (h) Section 41(h) of the Internal Revenue Code, relating to
5 termination, shall not apply.

6 (i) Section 41(g) of the Internal Revenue Code, relating to
7 special rule for passthrough of credit, is modified by each of the
8 following:

9 (1) The last sentence shall not apply.

10 (2) If the amount determined under Section 41(a) of the
11 Internal Revenue Code for any taxable year exceeds the limitation
12 of Section 41(g) of the Internal Revenue Code, that amount may
13 be carried over to other taxable years under the rules of subdivision
14 (e); except that the limitation of Section 41(g) of the Internal
15 Revenue Code shall be taken into account in each subsequent
16 taxable year.

17 SEC. 2. Section 23609 of the Revenue and Taxation Code is
18 amended to read:

19 23609. For each taxable year beginning on or after January 1,
20 1987, there shall be allowed as a credit against the "tax" (as
21 defined by Section 23036) an amount determined in accordance
22 with Section 41 of the Internal Revenue Code, except as follows:

23 (a) For each taxable year beginning before January 1, 1997,
24 both of the following modifications shall apply:

25 (1) The reference to "20 percent" in Section 41(a)(1) of the
26 Internal Revenue Code is modified to read "8 percent."

27 (2) The reference to "20 percent" in Section 41(a)(2) of the
28 Internal Revenue Code is modified to read "12 percent."

29 (b) (1) For each taxable year beginning on or after January 1,
30 1997, and before January 1, 1999, both of the following
31 modifications shall apply:

32 (A) The reference to "20 percent" in Section 41(a)(1) of the
33 Internal Revenue Code is modified to read "11 percent."

34 (B) The reference to "20 percent" in Section 41(a)(2) of the
35 Internal Revenue Code is modified to read "24 percent."

36 (2) For each taxable year beginning on or after January 1, 1999,
37 and before January 1, 2000, both of the following shall apply:

38 (A) The reference to "20 percent" in Section 41(a)(1) of the
39 Internal Revenue Code is modified to read "12 percent."

1 (B) The reference to “20 percent” in Section 41(a)(2) of the
2 Internal Revenue Code is modified to read “24 percent.”

3 (3) For each taxable year beginning on or after January 1, 2000,
4 both of the following shall apply:

5 (A) The reference to “20 percent” in Section 41(a)(1) of the
6 Internal Revenue Code is modified to read “15 percent.”

7 (B) The reference to “20 percent” in Section 41(a)(2) of the
8 Internal Revenue Code is modified to read “24 percent.”

9 (c) (1) With respect to any expense paid or incurred after the
10 operative date of Section 6378, Section 41(b)(1) of the Internal
11 Revenue Code is modified to exclude from the definition of
12 “qualified research expense” any amount paid or incurred for
13 tangible personal property that is eligible for the exemption from
14 sales or use tax provided by Section 6378.

15 (2) “Qualified research” and “basic research” shall include
16 only research conducted in California.

17 (d) The provisions of Section 41(e)(7)(A) of the Internal
18 Revenue Code, shall be modified so that “basic research,” for
19 purposes of this section, includes any basic or applied research
20 including scientific inquiry or original investigation for the
21 advancement of scientific or engineering knowledge or the
22 improved effectiveness of commercial products, except that the
23 term does not include any of the following:

24 (1) Basic research conducted outside California.

25 (2) Basic research in the social sciences, arts, or humanities.

26 (3) Basic research for the purpose of improving a commercial
27 product if the improvements relate to style, taste, cosmetic, or
28 seasonal design factors.

29 (4) Any expenditure paid or incurred for the purpose of
30 ascertaining the existence, location, extent, or quality of any
31 deposit of ore or other mineral (including oil and gas).

32 (e) (1) In the case of a taxpayer engaged in any
33 biopharmaceutical research activities that are described in codes
34 2833 to 2836, inclusive, or any research activities that are
35 described in codes 3826, 3829, or 3841 to 3845, inclusive, of the
36 Standard Industrial Classification (SIC) Manual published by the
37 United States Office of Management and Budget, 1987 edition, or
38 any other biotechnology research and development activities, the
39 provisions of Section 41(e)(6) of the Internal Revenue Code shall
40 be modified to include both of the following:

1 (A) A qualified organization as described in Section
2 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
3 institution of higher education as described in Section 3304(f) of
4 the Internal Revenue Code.

5 (B) A charitable research hospital owned by an organization
6 that is described in Section 501(c)(3) of the Internal Revenue
7 Code, is exempt from taxation under Section 501(a) of the Internal
8 Revenue Code, is not a private foundation, is designated a
9 “specialized laboratory cancer center,” and has received Clinical
10 Cancer Research Center status from the National Cancer Institute.

11 (2) For purposes of this subdivision:

12 (A) “Biopharmaceutical research activities” means those
13 activities that use organisms or materials derived from organisms,
14 and their cellular, subcellular, or molecular components, in order
15 to provide pharmaceutical products for human or animal
16 therapeutics and diagnostics. Biopharmaceutical activities make
17 use of living organisms to make commercial products, as opposed
18 to pharmaceutical activities that make use of chemical compounds
19 to produce commercial products.

20 (B) “Other biotechnology research and development
21 activities” means research and development activities consisting
22 of the application of recombinant DNA technology to produce
23 commercial products, as well as research and development
24 activities regarding pharmaceutical delivery systems designed to
25 provide a measure of control over the rate, duration, and site of
26 pharmaceutical delivery.

27 (f) In the case where the credit allowed by this section exceeds
28 the “tax,” the excess may be carried over to reduce the “tax” in
29 the following year, and succeeding years if necessary, until the
30 credit has been exhausted.

31 (g) For each taxable year beginning on or after January 1, 1998,
32 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
33 Internal Revenue Code, relating to contract research expenses, is
34 modified to read “this part or Part 10 (commencing with Section
35 17001).”

36 (h) (1) For each taxable year beginning on or after January 1,
37 1998, and before January 1, 2000:

38 (A) The reference to “1.65 percent” in Section 41(c)(4)(A)(i)
39 of the Internal Revenue Code is modified to read “one and
40 thirty-two hundredths of one percent.”

1 (B) The reference to “2.2 percent” in Section 41(c)(4)(A)(ii)
2 of the Internal Revenue Code is modified to read “one and
3 seventy-six hundredths of one percent.”

4 (C) The reference to “2.75 percent” in Section 41(c)(4)(A)(iii)
5 of the Internal Revenue Code is modified to read “two and
6 two-tenths of one percent.”

7 (2) For each taxable year beginning on or after January 1, 2000,
8 *and before January 1, 2002:*

9 (A) The reference to “1.65 percent” in Section 41(c)(4)(A)(i)
10 of the Internal Revenue Code is modified to read “one and
11 forty-nine hundredths of one percent.”

12 (B) The reference to “2.2 percent” in Section 41(c)(4)(A)(ii)
13 of the Internal Revenue Code is modified to read “one and
14 ninety-eight hundredths of one percent.”

15 (C) The reference to “2.75 percent” in Section 41(c)(4)(A)(iii)
16 of the Internal Revenue Code is modified to read “two and
17 forty-eight hundredths of one percent.”

18 (3) *For each taxable year beginning on or after January 1,*
19 *2002, Section 41(c)(4) of the Internal Revenue Code, relating to*
20 *election of alternative incremental credit, shall apply.*

21 (4) Section 41(c)(4)(B) shall not apply and in lieu thereof an
22 election under Section 41(c)(4)(A) of the Internal Revenue Code
23 may be made for any taxable year of the taxpayer beginning on or
24 after January 1, 1998. That election shall apply to the taxable year
25 for which made and all succeeding taxable years unless revoked
26 with the consent of the Franchise Tax Board.

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28 (5) Section 41(c)(6) of the Internal Revenue Code, relating to
29 gross receipts, is modified to take into account only those gross
30 receipts from the sale of property held primarily for sale to
31 customers in the ordinary course of the taxpayer’s trade or business
32 that is delivered or shipped to a purchaser within this state,
33 regardless of f.o.b. point or any other condition of the sale.

34 (i) Section 41(h) of the Internal Revenue Code, relating to
35 termination, shall not apply.

36 (j) Section 41(g) of the Internal Revenue Code, relating to
37 special rule for passthrough of credit, is modified by each of the
38 following:

39 (1) The last sentence shall not apply.

1 (2) If the amount determined under Section 41(a) of the
2 Internal Revenue Code for any taxable year exceeds the limitation
3 of Section 41(g) of the Internal Revenue Code, that amount may
4 be carried over to other taxable years under the rules of subdivision
5 (f), except that the limitation of Section 41(g) of the Internal
6 Revenue Code shall be taken into account in each subsequent
7 taxable year.

8 SEC. 3. This act provides for a tax levy within the meaning of
9 Article IV of the Constitution and shall go into immediate effect.

